IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1616 of 1999
To
FIRST APPEAL No. 1621 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
PATEL BABUBHAI VASHRAMBHAI

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Appearance :
Mr ND Gohil, Assistant Government Pleader for the appellant
Mr Munshi for Mr Sanjay R Patel for the respondent

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/07/2006

ORAL JUDGMENT :

By filing these first appeals, the appellants have challenged the judgment and order rendered by the learned Assistant Judge,

Himatnagar in Land Reference Cases Nos.3070 of 1989 to 3075 of 1989. By the aforesaid judgment the learned Judge of the Reference Court disposed of six land reference cases by a common judgment and award. The said references were partly allowed by the learned Judge and the present appellants were directed to pay the additional amount of compensation at the rate of Rs.168 per Are for acquired land together with 12% interest on the additional amount of market value of the land for the period from the date of issuance of notification under Section 4 of the Land Acquisition Act. The learned Judge has also granted 30% solatium on the market value of the land. The learned Judge has also granted interest at the rate of 9% for the first year from the date of taking over possession and thereafter at the rate of 15% till realisation of the additional amount of compensation. Being dissatisfied with the aforesaid judgment and order of the learned Judge of the Reference Court on behalf of the State the present first appeals have been filed. The respondent of each of these appeals is the agriculturist and the land is situated at village Vadali, District Sabarkantha. Various pieces of land were acquired by the Special Land Acquisition Officer for the purpose of Rameshwar Kampa Anushravan pond under the provisions of the Land Acquisition Act. The notification under Section 4 of the Land Acquisition Act was published in the Official Gazette on 25th November 1986. The Special Land Acquisition, thereafter declared the award and by his award the Special Land Acquisition Officer awarded Rs.60 per Are for non-irrigated land. The award was declared on 25.12.1987. So far as the lands of the respondents-claimants were concerned, same were irrigated agricultural lands. The owners of the land, however, were not satisfied with the fixation of market value of the land and requested for making reference to the District Court. The owners of the land demanded Rs.1,000 per Are for the acquired land. The Special Land Acquisition Officer has thereafter made various references (six in number) to the

District Court under Section 18 of the Act. The aforesaid land references were numbered as Land Reference Cases Nos.3070 of 1989 to 3075 of 1989. The learned Judge recorded the evidence in Land Reference Case No.3071 of 1989. After considering the evidence on record, the learned trial Judge came to the conclusion that the award of the Land Acquisition Officer by which he has awarded Rs.60 per Are is inadequate and the same is not the correct valuation of the land in question. The learned Judge came to the conclusion that looking to the production of the crops of various lands, the net income which the claimants might be getting will be Rs.9,125 per Acre. According to the learned trial Judge, the appropriate value of the land should be determined at the rate of Rs.228 per Are after deducting Rs.60 per Are awarded by the Special Land Acquisition Officer. The learned trial Judge has accordingly granted Rs.168 per Are. Accordingly, the additional compensation is given on that basis.

Learned advocate Mr Munshi for Mr Sanjay Patel, learned advocate for the respondents-claimants in each of this appeal has submitted that looking to the amount involved in these appeals, there is a petty claim as it is less than Rs.25,000/-, the appeals are required to be dismissed as according to him in series of judgments this Court has taken the view that if the claim involved in the appeal is small, the first appellate court would not normally interfere with the order of the trial Court. He submitted that except in two cases in all other cases the amount is less than Rs.30,000/-. In two references the amount involved is Rs.53,979 and Rs.41,688.

It is true that in some of the appeals the amount involved is very negligible and except in two cases the amount involved is less than Rs.30,000/-. Now since the appeals are pending for hearing, the

appeals are being disposed of on merits without considering the amount involved in the appeals.

The point which is required to be determined in these appeals is as to whether the additional amount granted by the trial Judge is just and proper. As discussed earlier, the learned trial Judge has fixed Rs.228 as the proper value of the land in question. It is required to be noted that the claimants have prayed the appropriate value of Rs.1,000/- per Are before the acquisition officer. As against that, the learned Judge has fixed Rs.228 per Are. In this connection, reference is required to be made to the deposition of claimants' witness, Babubhai Vashrambhai Patel at Exhibit 9. The said witness is the claimant of Land Reference Case No.3071 of 1989. In his evidence he has stated that the land in question was a very fertile land and he was cultivating jute, Castor seeds and other crops. In his evidence it is stated that the lands in question were very fertile lands. He has also stated about the net income which he used to get from the crops of the land in question. In his evidence he has stated that the lands in question are situated at a prime locality. The lands in question are non-irrigated lands. In his evidence he has stated that Rs.60 awarded by the Land Acquisition Officer is inadequate and the appropriate value is Rs.1,000/- per Are. The said witness has also produced revenue records showing the nature of the crops being taken from his land.

On behalf of the acquiring body no sale instances or documentary evidence was produced except oral evidence of one Ishwarbhai Punjiram Mehta, Talati-cum-Mantri at Exhibit 27. He has produced sale index regarding land bearing Survey No.1604/1, which reflects transaction of the year 1968. The index of other transactions were also produced which were of the year 1980 and 1982 respectively. On behalf of the

acquiring body one Ambalal Maganlal Thakar, Executive Engineer at Exhibit 37 was examined. The said witness has produced the map showing the distance between Vadali and the acquired land which seems to be at a distance of 3 kilometers.

The learned trial Judge has considered the aforesaid oral as well as documentary evidence. The sale transactions are produced on record at of the period of 1968, 1980 and 1982 which are of remote period. However, the learned Judge has not considered the sale instances on the ground that the sale deed of the said transactions are not produced on record by examining the vendor or the vendee. Mr Mushi for the claimants submitted that the learned Judge has committed a mistake in not relying upon the sale indexes. However, since the claimants have not filed any cross objection for additional amount, it is not necessary to examine this point. Learned AGP, Mr Gohil has relied upon the oral evidence of Talati cum Mantri who was examined at Exhibit 27 as well as sale index at Exhibit 28.

The learned Judge has thereafter considered the nature of the crops and the income which the claimants used to get from their respective land. The learned Judge has considered the income which the claimants were getting from the crop of cotton. The Court came to the conclusion that the total gross income of the claimants is Rs.5,500 per acre. The learned Judge deducted 50% amount towards the agricultural expenses and net amount was fixed at Rs.2,750. The learned Judge has thereafter multiplied the same by 10 multiplier and the net price was fixed at Rs.27,500. The learned Judge has thereafter considered the income through cultivation of Tuver. The claimants stated that they used to grow 40 maund of Tuver and the same was sold at Rs.80 per maund. The learned Judge has accordingly arrived at the

figure of Rs.3,200/- as gross income and after deducting 50% towards agricultural expenses multiplied the same with 10 multiplier. Thus, the total income out of Tuver cultivation was arrived at Rs.16,000 by the learned Judge. The learned Judge has fixed income of the crop of maize at Rs.11,250. Accordingly, the total income out of the three crops was fixed at Rs.54,750 (Rs.27,500 + Rs.16,000 + Rs.11,250). He thereafter divided the same amount by three and fixed Rs.18,250 as the average income per acre. He then deducted 30% amount (Rs.5,475) towards exaggeration of the quantity of the product and 20% amount (Rs.3,650) on account of uncertainty and failure of crop. The learned Judge has accordingly fixed the net income at Rs.9,125 per acre.

Mr Munshi, learned advocate for the claimants submitted that since no documents are produced on record, the income from the agricultural land is taken as basis and the learned Judge has fixed the price of the land at Rs.228 per Are. It is, therefore, not possible to accept the submission of the appellants that the said amount is further required to be reduced.

Considering the evidence on record, the aforesaid fixation cannot be said to be on higher side in any manner and the basis of the income of the crop which was taken into consideration by the learned Judge is based on the oral evidence of the claimants coupled with certain documents as produced on record. Under the circumstances, I do not find any substance in these appeals. All these appeals are accordingly dismissed. Record and proceedings be sent back to the lower court forthwith.

(P.B.Majmudar, J.)

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